

NICHOLAS LINKER, ESQ. (pro hac vice)  
ZEMEL LAW LLC  
660 Broadway  
Paterson, NJ 07514  
Tel: 862-227-3106  
Email: nl@zemellawllc.com

ROBERT SIBILIA S.B.N. 126979  
Oceanside Law Center  
P.O. Box 861  
Oceanside, CA 92049  
Tel: (760) 666-1151  
Fax: (818) 698-0300  
Email: robert@oceansidelawcenter.com  
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

JOSEPH SMITH,  
Plaintiff,  
vs.

RADIUS GLOBAL SOLUTIONS,  
LLC,  
Defendant.

)  
) **Case No. 5:22-cv-2259-RGK-SP**  
)  
) **PLAINTIFF'S MEMORDANDUM**  
) **IN SUPPORT OF HIS MOTION TO**  
) **ALTER JUDGMENT**  
)

)  
) Judge: Hon. R. Gary Klausner  
) Date: November 13, 2023  
) Time: 9:00 AM  
) Courtroom: 850  
)  
)  
)

1 Plaintiff respectfully brings this Motion to Alter Judgment to amend the  
2 Court's Order dated September 25, 2023 [ECF 43]. Plaintiff does not seek to  
3 overturn the Court's decision that Plaintiff's claims lack standing. However, the  
4 decision is internally inconsistent in that the Court *dismissed* the federal claim  
5 under the Fair Debt Collections Practices Act, 15 U.S.C. § 1692 *et seq.*  
6 ("FDCPA"), but *remanded* the claim under California's Rosenthal Fair Debt  
7 Collection Practices Act (the "Rosenthal Act"). Because both claims could be  
8 pursued in state court and were originally brought there, both claims should have  
9 been remanded.  
10  
11

12 A Court may alter or amend a judgment "(1) if such motion is necessary to  
13 correct manifest errors of law or fact upon which the judgment rests; (2) if such  
14 motion is necessary to present newly discovered or previously unavailable  
15 evidence; (3) if such motion is necessary to prevent a manifest injustice; or (4) if  
16 the amendment is justified by an intervening change in controlling law." *Allstate*  
17 *Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011).  
18  
19

20 In this case, the motion is needed to correct a manifest error of law or fact  
21 and to prevent a manifest injustice. To be clear, Plaintiff is not arguing that the  
22 Court's decision regarding standing is incorrect, Plaintiff is only arguing that the  
23 Court made an error when dismissing the federal FDCPA claim instead of  
24 remanding the claim. In opposing summary judgment, Plaintiff argued that if the  
25

1 Court found that Plaintiff lacked Article III standing, the case should be remanded  
 2 because Plaintiff originally filed the case in state court, and Defendant was the  
 3 party who asserted federal jurisdiction (only to change its mind later). The Court  
 4 seemingly agreed, finding that “Plaintiff contends that if the Court finds he lacks  
 5 standing for *his federal claim*, the claim should be remanded, rather than dismissed.  
 6 The Court agrees.” [ECF 43], p. 5 (emphasis added). The problem is that it  
 7 dismissed the federal claim and only remanded the state claim. This was either an  
 8 error in law or a mistake by the Court which should be redressed.  
 9

10  
 11 The statute governing remand of actions that were removed under 28 U.S.C.  
 12 § 1441 is 28 U.S.C. § 1447(c). *General Teamsters Local No. 174 v. Safeway, Inc.*,  
 13 2007 U.S. Dist. LEXIS 106391, at \*6 (W.D. Wash. Oct. 30, 2007). The language  
 14 of 28 U.S.C. § 1447(c) is explicitly clear: if at any time before final judgment it  
 15 appears that the district court lacks subject matter jurisdiction, the case shall be  
 16 remanded (emphasis added). “[W]hen a court finds that a plaintiff lacks Article III  
 17 standing, it must remand the entire action, ‘where the requirements of Article III  
 18 plainly will not apply.’” *Cal. Advocates for Nursing Home Reform, Inc. v.*  
 19 *Chapman*, 2014 U.S. Dist. LEXIS 752723, at \*14 (N.D. Cal. 2014) (citing *Int’l*  
 20 *Primate Prot. League v. Administrators of Tulane Educ. Fund*, 500 U.S. 72, 78 n.  
 21 4, 111 S. Ct. 1700, 114 L. Ed. 2d 134 (1991), *superseded by statute on unrelated*  
 22 *grounds*); *see also Maine Ass’n of Interdependent Neighborhoods v.*  
 23  
 24  
 25

1 *Commissioner, Maine Dep't of Human Servs.*, 876 F.2d 1051 (1st Cir. 1989);  
 2 *Langford v. Gates*, 610 F. Supp. 120, 122-23 (C.D. Cal. 1985) (lack of standing is  
 3 a jurisdictional defect, and “the proper course is remand” under § 1447(c), “not  
 4 dismissal”).

5  
 6 The Ninth Circuit has expressly held that “section 1447(c) means that if it is  
 7 discovered at any time in the litigation that there is no federal jurisdiction, a  
 8 removed case must be remanded to the state court rather than dismissed.” *Albingia*  
 9 *Versicherungs A.G. v. Schenker Int'l Inc.*, 344 F.3d 931, 938 (9th Cir. 2003),  
 10 *amended by* 350 F.3d 916 (2003). In other words, “a finding that removal was  
 11 improper deprive the Court of subject matter jurisdiction and obliges a remand  
 12 under the terms of § 1447(c).” *Int'l Primate Prot. League*, 500 U.S. at 87.

13  
 14 Accordingly, by binding authority, this Court is “obliged” to remand the  
 15 case if it finds a lack of Article III jurisdiction and that removal was improper. As  
 16 the Court found no standing here, it was obligated to remand under 28 U.S.C. §  
 17 1447(c). Inexplicably, the Court also *agreed* with Plaintiff that the claim should be  
 18 remanded, but did so only for the state claim. Thus, the Court’s order dismissing  
 19 the claims is a clear error of law and the dichotomy in the judgment must be  
 20 remedied. If the Court is worried that Defendant would try to remove the case  
 21 again, that should not be a concern. Defendant could not do so because it is clear  
 22 (under the law of the case) that the federal courts lack “original jurisdiction” over  
 23  
 24  
 25

1 the action. *See Maine Ass’n*, 876 F.2d at 1054 (“the Maine Commissioner would  
2 not be able to remove it again.”).

3 The failure to remand also is a manifest injustice to Plaintiff. By only  
4 remanding one of the two claims, the Court is effectively reducing Plaintiff’s  
5 recovery in half, without any statutory basis. The prospect of reducing potential  
6 recovery by 50% solely on the Court’s actions is a manifest injustice.  
7

8 For these, reasons, the Court should amend the judgment to remand the  
9 federal claim as well as the state claim. This motion is made following the  
10 conference of counsel pursuant to L.R. 7-3, which took place on October 9, 2023.  
11

12 Dated this 16th of October, 2023

13 Respectfully Submitted,  
14

15  
16 Nicholas Linker, Esq. (pro hac vice)  
17 Zemel Law LLC  
18 660 Broadway  
19 Paterson, NJ 07514  
T:862-227-3106  
NL@zemellawllc.com

20 /s/ Robert Sibilia  
21 ROBERT SIBILIA S.B.N. 126979  
22 Oceanside Law Center  
23 P.O. Box 861  
24 Oceanside, CA 92049  
Tel: (760) 666-1151  
Fax: (818) 698-0300  
Email: robert@oceansidelawcenter.com  
Attorneys for Plaintiff  
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## CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October, 2023, the foregoing document was served on all parties via the Court's e-filing system.

/s/ Robert Sibilia

ROBERT SIBILIA

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief contains approximately 879 words, which complies with the word limit of L.R. 11-6.1.

/s/ Robert Sibilia

ROBERT SIBILIA